

	Portales Police Department	SOP #	102.06
		Date Revised:	
	Standard Operating Procedure & Policy	ADM. #	02.06
1700 N. Boston St. Portales NM, 88130	Immunity from Arrest	Effective Date	
(575) 356-4404		Approval:	Pat Gallegos, Chief of Police

I. IMMUNITY FROM ARREST

A. Legislative immunity

- Members of the United States Congress are exempt from arrest when Congress is in session, or when they are en route to or from congressional business, except for traffic summonses. {Article I, Section 6, U.S. Constitution}
- Members of the New Mexico Legislature are exempt from arrest during a legislative session except in cases of treason, a felony, or a breach of the peace. {Article IV Section 13, Constitution of New Mexico}

B. Diplomatic immunity:

- Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure, or if an arrest for a felony is necessary, call and advise the U.S. State Department Office of Security {202-673-3881, days, or 202-647-2412, nights and weekends}.
- While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card and the incident involves a criminal offense, officers may detain the person either at the scene or at the department long enough to verify official status.
- When encountering a criminal suspect who claims diplomatic immunity, officers shall first take reasonable measures—including pat-downs or other legal searches—to ensure safety to the public or other officers. Verification of the diplomatic claim shall take place after a danger has been neutralized. A criminal investigation shall proceed as if no valid diplomatic immunity claim has been made. Interviews, interrogations, seizures of evidence, or issuance of warrants shall proceed per departmental procedure. In a criminal investigation, the chief shall remain in contact with the State Department.

4. Regardless of the claim of immunity, in any case where officers arrest or detain foreign nationals, the suspects shall be advised of their right to have their consular officials notified. In some cases, this notification is mandatory Note: the list of countries which require mandatory notification of consular officials in the event that one of their citizens has been arrested is extensive. The State Department shall be contacted for guidance. A list of these countries can be found at http://travel.state.gov/law/consular/consular_5125.html
5. Consular Officials will be allowed access to foreign nationals in Department Custody at anytime with the approval of the Chief. (New Mexico Standard ADM.02.06C)
6. Consular Officials will be notified when a foreign national in Department custody has died or when guardianship/ trusteeship is being considered due to incompetence or age. (New Mexico Standard ADM.02.06D and ADM.02.06E)
7. Foreign nationals who are arrested or detained will be provided the same rights under Miranda as any other individual when appropriate. (New Mexico Standard ADM.02.06G)
8. Should it become necessary to contact the U.S. State Department, the request should be addressed through the Chain of Command. (New Mexico Standard ADM.02.06H)